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FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

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|--------------------------------|---|----------------------|
| In the Matter of               | ) |                      |
|                                | ) |                      |
| Implementation of the Pay      | ) | CC Docket No. 96-128 |
| Telephone Reclassification and | ) |                      |
| Compensation Provisions of the | ) |                      |
| Telecommunications Act of 1996 | ) |                      |
|                                | ) |                      |
| Policy and Rules Governing     | ) | CC Docket No. 91-35  |
| Operator Services Access and   | ) |                      |
| Pay Telephone Compensation     | ) |                      |

To: The Commission

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**PUERTO RICO TELEPHONE COMPANY CONSOLIDATED  
OPPOSITION TO PETITIONS FOR RECONSIDERATION**

Pursuant to Section 1.106(g) of the FCC Rules and Regulations, 47 C.F.R. § 1.106(g), the Puerto Rico Telephone Company (PRTC) hereby respectfully submits its consolidated opposition to certain petitions for reconsideration of the Commission's Order in the captioned proceeding.<sup>1</sup>

**I. INTRODUCTION**

PRTC addresses four matters herein. First, as demonstrated below, American Public Communications Council's (APCC's) proposal to forbid public interest payphones within 200 yards of a competitive payphone is ill-conceived and should be rejected. Second, the Commission should reject various petitioners' arguments that payphone service providers (PSPs) should receive

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1. See Report and Order, FCC 96-388 (rel. Sept. 20, 1996) (the "Order").

marginal cost-based, rather than market-based, compensation for toll free and access code calls. Third, there is no basis for not compensating PSPs for international calls. And fourth, the Commission should make clear that a LEC is not required to provide independent PSPs central office functionalities other than those functionalities that the LEC provides to its affiliated PSP.

## II. DISCUSSION

### A. The Commission Should Not Arbitrarily Limit Where Public Interest Payphones May Be Located.

APCC urges the Commission to establish a 1200-foot wide perimeter around every competitive payphone within which no public interest payphones would be permitted. See APCC Pet. at 6-7. In support of its proposal, APCC argues that such "proximity of another payphone is ample proof that the location in question is not one where payphones cannot be profitably maintained." Id. at 7. APCC's proposal has no statutory foundation, would be detrimental to the public interest and must be rejected.

In the 1996 Act,<sup>2</sup> Congress directed the Commission to determine whether public interest payphones, which are provided in the interest of public health, safety, and welfare, in locations where there would otherwise not be a payphone, should be maintained, and if so, ensure

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2. Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 ("1996 Act") to be codified at 47 U.S.C. §§ 151 et seq. (Hereinafter, all citations to the 1996 Act will be to the 1996 Act as it will be codified in the United States Code.)

that such public interest payphones are payphones are supported fairly and equitably.

47 U.S.C § 276(b) (2). Based on the record in this proceeding, the Commission determined "that there is a need to ensure the maintenance of" public interest payphones. Order at ¶ 277.

Congress intended to prevent siting a public interest payphone side-by-side with a competitive payphone. Thus, the Conference Report explains that "the term [public interest payphone] does not apply to a payphone located near other payphones or to a payphone that . . . is provided for a location provider with whom the payphone provider has a contract." H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess. at 159 (1996) (emphasis added) ("Conference Report").

In the Order, the Commission, recognizing the unique circumstances present among the states, concluded "that the states are better equipped to determine where . . . public interest payphones should be placed." Order at ¶ 19. Thus, the Commission did not set a specific distance within which a public interest payphone cannot be located relative to a competitive payphone. Rather, the Commission defined a public interest payphone as "a payphone (1) which fulfills a public policy objective in health, safety, or public welfare, (2) is not provided for a location provider with an existing contract for the provision of a payphone, and (3) would not otherwise exist as a result of the operation of the competitive marketplace." Order at ¶ 282.

If APCC's proposal were enacted, a public interest payphone could not be sited at an elementary school, for example, if 200 yards away, a competitive payphone was available. However, it may be unsafe (and even prohibited) for young children -- as well as impracticable for those responsible for their safety and supervision -- to leave the school grounds to use a competitive payphone, some two football field lengths away. In Puerto Rico, where nearly half of the Island's residents live below the poverty line, it also may be financially burdensome for many students to use a competitive payphone.<sup>3</sup>

APCC's proposal disregards the Commission's "particular[] concern[] about the role served by payphones in providing access to emergency services," Order at ¶ 27, and would not permit states to address the peculiarities of local geography and infrastructure. For example, the proposal would forbid a public interest payphone at a public housing facility, if the proposed site is within one-ninth of a mile of a competitive payphone. Indeed, assuming an unobstructed straight pathway to that payphone, it could take an individual several minutes to walk the 200 or more yards to the nearest competitive payphone. That trip becomes more difficult when interrupted by a highway, railroad tracks, fencing or some other potentially dangerous obstacle

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3. Public payphones serve as a vital link for Puerto Rico's residents to the local phone network. Almost thirty percent of Puerto Rico's households lack telephone service. Individuals who otherwise do not have the means to afford residential phone service have access to emergency services, health providers, family members, employers, businesses and others.

between the competitive payphone and a public housing facility. The problem is compounded in an emergency situation.

It is imperative that public interest payphones be sited where they are needed most. Consistent with the Commission's guidelines in paragraph 282 of the Order, states are in the best position to make siting determinations for public interest payphones. APCC's proposal is contrary to the Communication's Act and must be denied.

**B. PSPs Should Receive Market Based Compensation For All Calls.**

Various petitioners argue that PSPs should receive marginal cost-based, rather than market-based, compensation for toll free and access code calls. See, e.g., petitions of AT&T; Cable & Wireless; LDDS WorldCom; Paging Network, Inc.; and Personal Communications Industry Association (collectively the "marginal cost petitioners").

The marginal cost petitioners' assorted arguments fail to recognize that the 1996 Act requires fair compensation to PSPs "for each and every completed intrastate and interstate call using their payphone[s]. . . ." 47 U.S.C. § 276(b)(1). Thus, the 1996 Act Conference Committee specifically directed the Commission "to establish a new system whereby all payphone service providers are fairly compensated for every . . . call . . . including . . . calls to 800 and new 888 services and calls dialed by means of carrier access codes." Conference Report at 158. In the context of Section 276's emphasis on competition, fair compensation means market-based compensation. Thus, the

Commission has determined that in stage two of the transition to competition in the payphone market, the surrogate coin rate of \$.35 is fair compensation for toll free and access code calls absent a negotiated agreement between the PSP and carrier-payor. See Order at ¶ 71.<sup>4</sup> Thereafter, the compensation rate for such calls will be a PSP's coin rate, subject to a different negotiated agreement between the parties. Order at ¶ 70.

The marginal cost petitioners argue that the cost of a non-coin sent call is substantially less than a coin drop call and that therefore compensation based on the coin drop rate is inappropriate. The Commission, however, has found that "the cost of originating the various types of payphone calls are similar." Order at ¶ 70. The marginal cost petitioners contend that PSPs experience a "substantial" cost savings as a result of not having to collect coin deposits for non-coin sent calls. Any such savings are negligible since PSPs regularly schedule coin pick up at their payphones; it is an unavoidable cost of doing business. If anything, the fact that PSPs must wait for remuneration from toll free service providers and providers of access code calling means that PSPs lose the time value of money and the certain collectability of coin drop calls.

The marginal cost petitioners also argue that PSPs save the cost of coin service signaling capabilities for non-coin sent calls. However, these capabilities are a fixed cost for "smart"

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4. In stage one (the first year) of the transition to competition, PSPs will receive flat rate compensation of \$45.85 per month per phone.

payphones (also know as instrument-implemented telephones) which have all circuitry required to execute coin acceptance and related functions built-in. Any cost savings associated with coin service signaling for a "dumb" (that is, central-office implemented) telephone are not substantial.

The Commission's market-based compensation approach for toll free and access code calls is consistent with Section 276's and Congress' emphasis on a competitive payphone market. There is no basis for the marginal cost petitioners' arguments that the Commission refine the \$.35 coin drop surrogate rate for non-coin sent calls. Indeed, the fact that a toll free call or an access code call precludes the use of the subject payphone for a coin drop call underscores why PSPs should receive the market based coin drop rate. Finally, arguments that PSPs should not be compensated at all for international calls fail to recognize "that a payphone performs similar functions, regardless of the destination of the call," Order at ¶ 54, and should be rejected.

**C. LECs Should Not Be Required To Offer Central Office Functionalities To Independent PSPs That They Do Not Provide To Affiliated PSPs.**

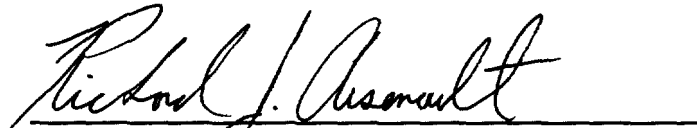
The Commission should make clear that a LEC need only provide central office functionalities to an independent PSP that it provides to an affiliated PSP. The New Jersey Payphone Association (NJPA) "requests the Commission clarify that LECs are required to make network-based call tracking available for calls made from independent payphones if they make it available for calls made from their own payphones." NJPA Pet. at 9 (emphasis

added). PRTC does not disagree with NJPA's position. However, the Commission must make it absolutely clear that the Order does not require LECs to provide central office functionalities (of whatever kind) to non-affiliated PSPs that they do not offer to an affiliated PSP.

### III. CONCLUSION

For these reasons, the Puerto Rico Telephone Company respectfully requests (1) that APCC's proposal to forbid public interest payphones within 200 yards of a competitive payphone be denied, (2) that the various petitioners' arguments for marginal cost-based, rather than market-based, compensation for toll free and access code calls be denied, and (3) that the Commission clarify that a LEC is not obligated to provide central office functionalities to an unaffiliated PSP that the LEC does not also provide to an affiliated PSP.

Respectfully submitted,



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October 28, 1996



**CERTIFICATE OF SERVICE**

I, Richard J. Arsenault, hereby certify that a copy of the foregoing Consolidated Opposition of Puerto Rico Telephone Company to Petitions for Reconsideration has been served, by first class mail, postage prepaid, this 28th day of October, 1996 to:

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